

House Study Bill 140 - Introduced

SENATE/HOUSE FILE _____
BY (PROPOSED DEPARTMENT OF
COMMERCE/INSURANCE DIVISION
BILL)

A BILL FOR

1 An Act requiring the submission of a corporate governance
2 annual disclosure to the commissioner of insurance by
3 certain insurers or insurance groups, and including
4 penalties and applicability date provisions.
5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 521H.1 Purpose and scope.

2 1. The purpose of this chapter is to do all of the
3 following:

4 a. Provide the commissioner with a summary of an insurer's
5 or insurance group's corporate governance structure, policies,
6 and practices to permit the commissioner to gain and maintain
7 an understanding of the insurer's or insurance group's
8 corporate governance framework.

9 b. Outline the requirements for an insurer or insurance
10 group to complete a corporate governance annual disclosure for
11 submission to the commissioner.

12 c. Provide for the confidential treatment of the corporate
13 governance annual disclosure and related information that
14 contains confidential and sensitive information related to
15 an insurer's or insurance group's internal operations and
16 proprietary and trade secret information which, if made
17 public, could potentially cause the insurer or insurance group
18 competitive harm or disadvantage.

19 2. Nothing in this chapter shall be construed to prescribe
20 or impose corporate governance standards or internal procedures
21 beyond those which are required under applicable state
22 corporate law. In addition, nothing in this chapter shall be
23 construed to limit the commissioner's authority under chapter
24 507, or the rights or obligations of third parties thereunder.

25 3. The requirements of this chapter shall apply to all
26 insurers domiciled in this state.

27 Sec. 2. NEW SECTION. 521H.2 Definitions.

28 1. "Commissioner" means the commissioner of insurance.

29 2. "Corporate governance annual disclosure" or "disclosure"
30 means a confidential report filed by an insurer or insurance
31 group pursuant to the requirements of this chapter.

32 3. "Insurance group" means those insurers and affiliates
33 included within an insurance holding company system.

34 4. "Insurance holding company system" means the same as
35 defined in section 521A.1.

1 5. "Insurer" means the same as defined in section 521A.1.

2 Sec. 3. NEW SECTION. 521H.3 Corporate governance annual
3 disclosure requirement.

4 1. An insurer, or the insurance group of which the insurer
5 is a member, shall, no later than June 1 of each calendar
6 year, submit to the commissioner a corporate governance annual
7 disclosure that contains the information described in section
8 521H.5. Notwithstanding any request from the commissioner
9 made pursuant to subsection 3, if an insurer is a member of
10 an insurance group, the insurer shall submit the disclosure
11 required by this section to the commissioner of insurance of
12 the lead state of the insurance group of which the insurer is
13 a member, in accordance with the laws of the lead state, as
14 determined by procedures contained in the financial analysis
15 handbook adopted by the national association of insurance
16 commissioners.

17 2. An insurer or insurance group that is not required to
18 submit a corporate governance annual disclosure under this
19 section shall do so upon the commissioner's request.

20 3. Review of the corporate governance annual disclosure and
21 any additional requests for information shall be made through
22 the lead state as determined by procedures contained in the
23 financial analysis handbook adopted by the national association
24 of insurance commissioners.

25 4. Insurers or insurance groups that provide information
26 substantially similar to the information required by this
27 chapter in other documents provided to the commissioner,
28 including proxy statements filed in conjunction with the form B
29 insurance holding company system annual registration statement
30 requirements as provided in section 521A.4, or other state or
31 federal filings provided to the commissioner, are not required
32 to duplicate that information in the corporate governance
33 annual disclosure, but shall cross reference the document in
34 which the information is included.

35 Sec. 4. NEW SECTION. 521H.4 Rules.

1 The commissioner shall adopt rules pursuant to chapter 17A
2 to administer this chapter.

3 Sec. 5. NEW SECTION. 521H.5 **Contents of corporate**
4 **governance annual disclosure.**

5 1. An insurer, or the insurance group of which the insurer
6 is a member, shall have discretion over the responses to
7 corporate governance annual disclosure inquiries, provided
8 the corporate governance annual disclosure contains the
9 material information necessary to permit the commissioner to
10 gain an understanding of the insurer's or insurance group's
11 corporate governance structure, policies, and practices. The
12 commissioner may request additional information that the
13 commissioner deems material and necessary to provide a clear
14 understanding of the insurer's or insurance group's corporate
15 governance policies, reporting or information systems, or the
16 controls implementing such policies or systems.

17 2. Notwithstanding subsection 1, the corporate governance
18 annual disclosure shall be prepared consistent with rules
19 adopted by the commissioner pursuant to chapter 17A.
20 Documentation and supporting information prepared pursuant
21 to this chapter and related rules shall be maintained and
22 made available upon examination by or upon request of the
23 commissioner.

24 3. The corporate governance annual disclosure shall include
25 the signature of the insurer's or insurance group's chief
26 executive officer or corporate secretary, attesting that to the
27 best of that individual's belief and knowledge the insurer or
28 the insurance group has implemented the corporate governance
29 practices described in the disclosure and that a copy of the
30 disclosure has been provided to the insurer's or the insurance
31 group's board of directors or the appropriate committee of the
32 board.

33 4. a. For purposes of completing a corporate governance
34 annual disclosure, an insurer or insurance group may report
35 information regarding corporate governance at the ultimate

1 controlling parent level, at an intermediate holding company
2 level, or at the individual legal entity level, depending upon
3 how the insurer or insurance group has structured its system
4 of corporate governance.

5 *b.* An insurer or insurance group is encouraged to report
6 information in the corporate governance annual disclosure at
7 the level at which the insurer's or insurance group's risk
8 tolerance is determined; at the level at which the earnings,
9 capital, liquidity, operations, and reputation of the insurer
10 or insurance group are overseen collectively and the level
11 at which the supervision of these factors is coordinated and
12 exercised; or at the level at which legal liability for failure
13 of general corporate governance duties would be placed. If an
14 insurer or insurance group determines the level of reporting
15 based upon the criteria set forth in this paragraph, the
16 insurer or insurance group shall indicate which of the three
17 criteria was used to determine the level of reporting and
18 explain any subsequent changes that are made in the level of
19 reporting.

20 Sec. 6. NEW SECTION. 521H.6 Confidentiality.

21 1. Documents, materials, or other information, including
22 a corporate governance annual disclosure, in the possession
23 or control of the insurance division of the department of
24 commerce, that is obtained by, created by, or disclosed to the
25 commissioner or to any other person pursuant to this chapter,
26 is recognized in this state as being proprietary and containing
27 trade secrets. All such documents, materials, or other
28 information, including the disclosure, shall be confidential
29 and privileged, shall not be subject to chapter 22, shall
30 be considered confidential under chapter 507, shall not be
31 subject to subpoena, and shall not be subject to discovery
32 or admissible in evidence in any private civil action.
33 However, the commissioner is authorized to use such documents,
34 materials, or other information, including the disclosure, in
35 the furtherance of any regulatory or legal action brought as a

1 part of the commissioner's official duties. The commissioner
2 shall not otherwise make the documents, materials, or other
3 information, including the disclosure, public without the
4 prior written consent of the insurer or insurance group that
5 provided the documents, materials, or other information,
6 including the disclosure. Nothing in this section shall
7 be construed to require written consent of the insurer or
8 insurance group before the commissioner may share or receive
9 confidential documents, materials, or other information related
10 to governance of an insurer or insurance group pursuant to
11 subsection 3 to assist in the performance of the commissioner's
12 regular duties.

13 2. The commissioner or any other person who received
14 documents, materials, or other information related to corporate
15 governance, through examination or otherwise, while acting
16 under the authority of the commissioner or with whom such
17 documents, materials, or other information is shared pursuant
18 to this chapter, shall not be permitted or required to testify
19 in any private civil action concerning any confidential
20 documents, materials, or information, including disclosures,
21 subject to subsection 1.

22 3. In order to assist in the performance of the
23 commissioner's regulatory duties, the commissioner may do any
24 of the following:

25 a. Upon request, share documents, materials, or corporate
26 governance annual disclosure-related information, including
27 the confidential and privileged documents, materials, or
28 information subject to subsection 1, and including proprietary
29 and trade secret documents, materials, or information,
30 with other state, federal, or international financial
31 regulatory agencies, including members of any supervisory
32 college as defined in section 521A.1, with the national
33 association of insurance commissioners, or with any third-party
34 consultants designated by the commissioner pursuant to
35 subsection 4, provided that the recipient agrees in writing

1 to maintain the confidentiality and privileged status of the
2 documents, materials, or other corporate governance annual
3 disclosure-related information and verifies in writing the
4 legal authority to maintain such confidentiality and privilege.

5 *b.* Receive documents, materials, or other corporate
6 governance annual disclosure-related information, including
7 otherwise confidential and privileged documents, materials,
8 or information, and proprietary and trade secret documents,
9 materials, and information, from regulatory officials of
10 other foreign or domestic jurisdictions, including members
11 of any supervisory college as defined in section 521A.1, and
12 from the national association of insurance commissioners,
13 and shall maintain as confidential or privileged any
14 documents, materials, or information received with notice or
15 the understanding that the documents, materials, or other
16 information received is confidential and privileged under the
17 laws of the jurisdiction that is the source of the documents,
18 materials, or information.

19 4. In order to assist in the performance of the
20 commissioner's regulatory duties under this chapter the
21 commissioner may retain, at the insurer's or insurance
22 group's expense, third-party consultants, including attorneys,
23 actuaries, accountants, and other experts not otherwise a part
24 of the commissioner's staff, as may be reasonably necessary to
25 assist the commissioner in reviewing a disclosure and related
26 information submitted under this chapter or ensuring compliance
27 of an insurer or insurance group with the requirements of this
28 chapter.

29 *a.* Any persons retained under this subsection shall be under
30 the direction and control of the commissioner and shall act in
31 a purely advisory capacity.

32 *b.* As part of the retention process, a third-party
33 consultant shall verify to the commissioner that the
34 third-party consultant is free of any conflict of interest and
35 that the third-party consultant has internal procedures in

1 place to monitor compliance if a conflict arises and to ensure
2 compliance with the confidentiality standards and requirements
3 of this chapter.

4 5. In order to assist in the performance of the
5 commissioner's regulatory duties, the commissioner shall enter
6 into a written agreement with the national association of
7 insurance commissioners or with a third-party consultant that
8 is consistent with subsections 3 and 4, governing the sharing
9 and use of information provided pursuant to this chapter, and
10 that does all of the following:

11 a. Expressly provides that the national association of
12 insurance commissioners and any third-party consultants
13 retained are subject to the same confidentiality standards
14 and requirements governing the sharing and use of information
15 provided pursuant to this chapter as the commissioner.

16 b. Specifies procedures and protocols regarding the
17 confidentiality and security of information related to a
18 corporate governance annual disclosure that is shared with
19 the national association of insurance commissioners or with a
20 third-party consultant pursuant to this chapter and specifies
21 procedures and protocols for sharing information by the
22 national association of insurance commissioners only with other
23 state insurance regulators from states in which an insurance
24 group has domiciled insurers. The agreement shall require
25 that the recipient of such information must agree in writing
26 to maintain the confidentiality and privileged status of the
27 documents, materials, or other information related to the
28 corporate governance annual disclosure and verify in writing
29 the legal authority to maintain confidentiality and privilege.

30 c. Specifies that ownership of information shared with
31 the national association of insurance commissioners or with
32 a third-party consultant pursuant to this chapter remains
33 with the commissioner and that use of the information by
34 the national association of insurance commissioners or by a
35 third-party consultant is subject to the direction of the

1 commissioner.

2 *d.* Prohibits the national association of insurance
3 commissioners or a third-party consultant from storing the
4 information shared pursuant to this chapter in a permanent
5 database after the underlying analysis is completed.

6 *e.* Requires the national association of insurance
7 commissioners or a third-party consultant to give prompt notice
8 to the commissioner and to an insurer or insurance group whose
9 confidential information is in the possession of the national
10 association of insurance commissioners or a third-party
11 consultant pursuant to this chapter, that the information is
12 subject to a request or subpoena to the national association
13 of insurance commissioners or the third-party consultant for
14 disclosure or production.

15 *f.* Requires the national association of insurance
16 commissioners or a third-party consultant to consent to
17 intervention by an insurer or insurance group in any judicial
18 or administrative action in which the national association of
19 insurance commissioners or the third-party consultant may be
20 required to disclose confidential information about the insurer
21 or insurance group that was shared with the association or
22 consultant pursuant to this chapter.

23 6. The sharing of documents, materials, or information by
24 the commissioner pursuant to this chapter shall not constitute
25 a delegation of regulatory authority or rulemaking, and the
26 commissioner is solely responsible for the administration,
27 execution, and enforcement of the provisions of this chapter.

28 7. No waiver of any applicable privilege or claim of
29 confidentiality in the documents, proprietary and trade
30 secret materials, or other corporate governance annual
31 disclosure-related information shall occur as a result of the
32 disclosure of such documents, materials, or information to the
33 commissioner under this section or as a result of sharing those
34 documents, materials, or information as authorized in this
35 chapter.

1 insurer's or insurance group's governance structure, policies,
2 and practices to permit the commissioner to understand the
3 insurer's or insurance group's corporate governance framework.

4 Beginning in 2016, an insurer or insurance group is
5 required to submit by June 1, annually, a corporate governance
6 annual disclosure to the commissioner that contains material
7 information necessary to permit the commissioner to gain an
8 understanding of the insurer's or insurance group's corporate
9 governance structure, policies, and practices. The disclosure
10 must be signed by the insurer's or insurance group's chief
11 executive officer or secretary attesting that the corporate
12 practices described in the disclosure have been implemented
13 and that a copy of the disclosure has been provided to the
14 insurer's or insurance group's board of directors or the
15 appropriate committee of the board. If an insurer is a member
16 of an insurance group, the insurer shall submit the disclosure
17 to the commissioner of insurance of the lead state of the
18 insurance group as determined by procedures contained in the
19 financial analysis handbook adopted by the national association
20 of insurance commissioners.

21 For purposes of the disclosure, the insurer or insurance
22 group may report information regarding corporate governance
23 at the ultimate parent controlling level, an intermediate
24 holding company level, or at the individual legal entity
25 level depending on how its system of corporate governance is
26 structured. The insurer or insurance group is encouraged to
27 make its disclosure at the level at which its risk tolerance
28 is determined; at the level at which its earnings, capital,
29 liquidity, operations, and reputation are overseen collectively
30 and the level at which the supervision of these factors is
31 coordinated and exercised; or at the level at which legal
32 liability for failure of general corporate governance duties
33 would be placed, and to indicate which of these factors
34 were used to determine the level of reporting, including any
35 subsequent changes.

1 The commissioner is directed to adopt rules to administer
2 new Code chapter 521H.

3 Documents, materials, or other information, including a
4 corporate governance annual disclosure, in the possession or
5 control of the insurance division of the department of commerce
6 or any other person pursuant to the bill that is obtained by,
7 created by, or disclosed to the commissioner or to any other
8 person pursuant to the bill, is recognized as being proprietary
9 and containing trade secrets. Such documents, materials, or
10 other information, including the disclosure, is confidential,
11 is not subject to Code chapter 22 (open records), shall be
12 considered confidential under Code chapter 507 (examination of
13 insurance companies), shall not be subject to subpoena, and
14 shall not be subject to discovery or admissible in evidence in
15 any private civil action. The commissioner is authorized to
16 use such information in the furtherance of any regulatory or
17 legal action brought as part of the commissioner's official
18 duties. The commissioner shall not otherwise make such
19 information public without the prior written consent of
20 the insurer or insurance group. The commissioner or any
21 other person with access to such information shall not be
22 permitted or required to testify in any civil action concerning
23 confidential information.

24 In performing regulatory duties, the commissioner may
25 share confidential and privileged information with specified
26 regulatory and other entities including certain third-party
27 consultants, and may receive such information from specified
28 regulatory and other entities.

29 In order to assist in the performance of the commissioner's
30 regulatory duties, the commissioner may retain, at the
31 insurer's or insurance group's expense, third-party
32 consultants, including attorneys, actuaries, accountants, and
33 other experts not otherwise part of the commissioner's staff,
34 as necessary to assist in reviewing a disclosure and related
35 information or ensuring compliance with the requirements of

1 the new Code chapter. Third-party consultants retained are
2 under the direction and control of the commissioner and act
3 in an advisory capacity only. Such third-party consultants
4 must verify that they are free of any conflict of interest
5 and that they have internal procedures in place to monitor
6 compliance if there is a conflict and to ensure compliance with
7 the confidentiality standards and requirements of the new Code
8 chapter.

9 In performing regulatory duties, the commissioner is
10 required to enter into a written agreement with the national
11 association of insurance commissioners or with a third-party
12 consultant that governs the sharing and use of information
13 provided pursuant to new Code chapter 521H. The agreement
14 must specify that those parties are subject to the same
15 confidentiality standards and requirements governing the
16 sharing and use of information as the commissioner; specify
17 procedures and protocols for the confidentiality and security
18 of information shared and require that the recipient of such
19 information agree in writing to maintain the confidentiality
20 and privileged status of the information and verify the
21 legal authority to do so; specify that ownership of shared
22 information remains with the commissioner, who directs its
23 use; prohibit storage of the information in a permanent
24 database after analysis is complete; require prompt notice to
25 the commissioner and to an insurer or insurance group if the
26 insurer's or insurance group's information is subject to a
27 request or subpoena for disclosure or production; and require
28 that an insurer or insurance group be allowed to intervene in
29 any judicial or administrative action in which the national
30 association of insurance commissioners or a third-party
31 consultant may be required to disclose confidential information
32 that was shared pursuant to the new Code chapter.

33 The sharing of information pursuant to new Code chapter 521H
34 does not constitute a delegation of regulatory authority or
35 rulemaking by the commissioner, or a waiver of any applicable

1 privilege or claim of confidentiality.

2 If an insurer or insurance group fails, without just cause
3 to timely file a corporate governance annual disclosure as
4 required in new Code chapter 521H, the commissioner shall,
5 after notice and hearing, impose a penalty of \$500 for each
6 day's delay, up to a maximum penalty of \$5,000 for any single
7 failure to file. The penalties collected by the commissioner
8 are to be paid to the treasurer of state for deposit in the
9 department of commerce revolving fund as provided in Code
10 section 505.7. The commissioner may reduce the penalty if the
11 insurer or insurance group demonstrates that imposition of the
12 penalty would constitute a financial hardship to the insurer
13 or insurance group.

14 The provisions of the new Code chapter are severable,
15 with the exception of Code section 521H.6, relating to
16 confidentiality, in the event that application of the Code
17 chapter to any person or circumstance is held to be invalid.

18 New Code chapter 521H is applicable beginning on January 1,
19 2016.